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April 5, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 22, 2004

Case Number: TSO-0107

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance). The local DOE security office suspended the individual's access authorization after determining that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual's access authorization should be restored.

**Background**

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The local security office issued a Notification Letter to the individual on February 27, 2004. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a security clearance, based on disqualifying criteria set forth in section 710.8, paragraphs (h) and (j).

The Notification Letter alleges that the individual is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. *See* 10 C.F.R. § 710.8(j). This charge is based on an evaluation of the individual by a DOE consultant psychiatrist conducted on January 31, 2003. In his report dated February 3, 2003, the DOE psychiatrist diagnosed the individual as suffering from alcohol abuse, without adequate evidence of rehabilitation or reformation. The DOE psychiatrist also stated in his report that the individual drank alcohol habitually to excess from 1992 to 2002. According to the DOE psychiatrist's report, the individual would need two years of sobriety, including 100 hours of attendance at Alcohols Anonymous meetings or 50 hours of professionally led substance abuse treatment to provide adequate evidence of rehabilitation. In the absence of any organized treatment, the individual would need three years of sobriety to show adequate evidence of reformation. The

Notification Letter also alleges that alcohol abuse is an illness that causes or may cause a significant defect in judgment or reliability. *See* 10 C.F.R. § 710.8(h).

According to the Notification Letter, at the time of the DOE psychiatrist's evaluation, the individual was continuing to drink alcohol. The Notification Letter also noted that in March 1999 and July 2002 the individual was arrested for Driving While Intoxicated (DWI). These DWIs and the DOE psychiatrist's evaluation are the bases for the security concerns in the Notification Letter.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing. The local security office transmitted the hearing request to the Office of Hearings and Appeals (OHA), and the Director of OHA appointed me as the Hearing Officer in this case. At the hearing I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual, who represented himself, testified on his own behalf, and called four other witnesses: a clinical counselor and a clinical social worker from his present treatment program, his supervisor and a client. The local security office submitted 10 written exhibits. The individual submitted a written answer to the Notification Letter and introduced 12 written exhibits before, during, and after the hearing.

### **Standard of Review**

The applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in section 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with

evidence to convince DOE that granting or restoring his or her access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” *See, e.g., Personnel Security Hearing*, Case No. TSO-0118, 29 DOE ¶ 82,771 at 85,616 (2004), and cases cited therein. In addition, any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a). For the reasons discussed below, it is my opinion that the individual has resolved the security concerns described in the Notification Letter, and therefore his access authorization should be restored.

### **Findings of Fact**

The individual did not dispute the allegations in the Notification Letter. He maintained, however, that he is now rehabilitated and reformed, and no longer suffers from alcohol abuse, as he did according to the DOE psychiatrist’s evaluation over 19 months before the hearing.

When DOE considered his eligibility for a clearance, the local security office was concerned that the individual had been arrested and charged with DWI twice in four years. The individual related to the local security office that in March 1998, after drinking four beers and a mixed drink, he was stopped for speeding. Transcript of July 3, 2001 Personnel Security Interview, DOE Exhibit 12 (2001 PSI) at 13. The arresting officer directed him to take two breath analysis tests, the results of which indicated that his blood alcohol content (BAC) was .14 and .15 respectively. *Id.* at 18. He pled guilty to the DWI charge. Transcript of October 30, 2002 Personnel Security Interview, DOE Exhibit 9 (2002 PSI) at 18. He paid the fines and attended the classes as directed by the court. 2001 PSI at 21-22. Nevertheless, the individual continued to consume beer regularly, and drink two shots of hard liquor roughly once a month. *Id.* at 23-24. At the time of that 2001 interview, he was committed to not driving after drinking alcohol. *Id.* at 26.

In July 2002, however, the individual was again arrested for DWI. After drinking two beers and two or three O’Doul’s nonalcoholic beers in about one and one-half hours at a pool hall, he was pulled over by a police officer as he was leaving the pool hall’s parking lot. 2002 PSI at 6-7. According to the individual’s account, the police officer stated that the individual smelled like alcohol and failed a field sobriety test (while acknowledging that the individual’s sprained ankle probably caused the failure). *Id.* at 7. The individual did not feel that he was intoxicated at the time of the arrest, *id.*, did not plead guilty, and appeared in court. The police officer failed to appear, and the case was dismissed. *Id.* at 8. The individual felt that “it was a case of entrapment essentially.” *Id.* at 11. Nevertheless, after that arrest, he determined that he would no longer drink alcohol at drinking establishments, and had not done so since the arrest. He did, however, state that he still drank beer occasionally. *Id.* at 24.

Following the 2002 PSI, the local security office referred the individual to the DOE psychiatrist for evaluation. In his report to the local security office, the DOE psychiatrist diagnosed the individual as suffering from alcohol abuse as defined in the Diagnostic and

Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM IV-TR). To support a diagnosis of alcohol abuse under the DSM IV-TR, the evaluating psychiatrist should find that the individual displays “a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of [four listed criteria], occurring within a 12 month period.” Report of DOE Psychiatrist, February 3, 2003, DOE Exhibit 3 (Psych Report) at 12. The DOE psychiatrist stated that the individual strongly met the second criterion for the years 2001 and 2002: “recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile operating a machine when impaired by substance use).” *Id.* at 7 (individual stated he drove three or four times while he believed he was legally intoxicated in addition to the time he was arrested in 2002). He also stated that the individual weakly met the fourth criterion for the same period: “continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).” *Id.* at 9 (arguments with wife about being out with friends drinking and playing pool). In addition, the DOE psychiatrist determined that the individual was drinking habitually to excess for the period 1992-2002, *id.* at 4 n.9, 7 n.21, 8 n.29, 9 n.30, and was in the early stages of alcohol dependence. *Id.* at 14.

In his report, the DOE psychiatrist found inadequate evidence of rehabilitation or reformation from the individual’s alcohol problems. By his own admission, the individual’s last drink was one month before the evaluation, and he had never engaged in any rehabilitation efforts. *Id.* As adequate evidence of rehabilitation, the DOE psychiatrist required two years of abstinence from alcohol, including either one year of participation in Alcoholics Anonymous meetings (100 hours, with a sponsor), or six months of participation in a professionally led substance abuse program (50 hours). *Id.* As adequate evidence of reformation, the DOE psychiatrist required two years of absolute sobriety if the individual participated in one of the specified rehabilitation programs, or three years of absolute sobriety if he did not. *Id.* at 15.

The DOE psychiatrist also determined that the individual had an illness, alcohol abuse, that causes or may cause a significant defect in judgment or reliability, at least until such time as the individual shows adequate evidence of rehabilitation or reformation from his alcohol abuse. *Id.* at 15-16.

### **Testimony of the Witnesses at the Hearing**

#### **The Individual**

At the hearing the individual recounted his alcohol use since the 2002 PSI. In the four months between the PSI and his psychiatric evaluation, he drank beer two or three times, the last being New Year’s Eve of 2002. *Id.* at 31. After his psychiatric evaluation, he drank no alcohol for about four months. He then had a few beers on his birthday, and drank a few more times over the next four months, until his security clearance was suspended in September 2003. *Id.* at 32-33. Although he had been aware of the local

security office's concerns about his alcohol use ever since his PSI in October 2002, *id.* at 29, he did not take the concern seriously until his clearance was suspended: "[T]hat was the straw that broke the camel's back, and I just decided . . . that this has caused enough problems already and to do something about it." *Id.* at 33-34. In the eleven months between the security clearance suspension and the hearing, the individual drank no alcohol other than O'Doul's, a "beer" with an alcoholic content of one-half of one percent, or one-tenth that of regular beer. He consumed "maybe a couple" of O'Doul's at most four or five times during that period, because he likes the taste of beer and because in social situations, such as a dance, drinking an O'Doul's allows him not to "feel like an outcast." *Id.* at 35-36. He last consumed an O'Doul's about six months before the hearing. *Id.* at 11.

The individual also testified about the treatment he has received. After his security clearance was suspended, he arranged for an evaluation at a local mental health treatment facility. He began seeing a clinical social worker at that facility in December 2003. The social worker determined that the individual did not have a serious problem with alcohol, and they met only once every two months. *Id.* at 14-15. About six weeks before the hearing, the individual saw a copy of the DOE psychiatrist's report for the first time. *Id.* at 15. He gave the social worker a copy, and based on the facts and opinions expressed in the report, the social worker allowed him to enroll voluntarily in an intensive outpatient treatment program. *Id.* at 15-16, 21. In the five weeks preceding the hearing, the individual completed 40 hours of the treatment program. *Id.* at 18. At the time of the hearing he was approximately halfway through the ten-week treatment program, which he intends to complete. *Id.* at 19, 21. He had also attended eight hours of Alcoholics Anonymous meetings, and testified that he was not aware that he should be attending AA until he saw the DOE psychiatrist's report. *Id.* at 18, 21. The individual stated that his future intention with respect to alcohol is to drink responsibly, but only if that is possible in his case. *Id.* at 19.

### **The Clinical Counselor**

The clinical counselor first saw the individual after the individual received the DOE psychiatrist's report, about six weeks before the hearing. In order to assess the individual, the clinical counselor administered four tests: the Substance Abuse Subtle Screening Inventory, the Michigan Alcohol Screening Test, the Addiction Severity Index, and the Drug Abuse Screening Test. *Id.* at 45-46. On the basis of the four assessment tests and the individual's intake interview, the clinical counselor found no "evidence to substantiate a substance dependence disorder." *Id.* at 46. Taking into account the individual's "prior trouble with the law" and the DOE psychiatrist's assessment, particularly his opinion that an intensive outpatient program was indicated, the clinical counselor diagnosed the individual with alcohol abuse and set up a treatment program for him. *Id.* He conceded, however, that even the diagnosis of alcohol abuse is "basically a stretch." *Id.* at 49.

The clinical counselor stated that the individual may not be convinced that he is an alcoholic. Nevertheless, the individual is taking the treatment program and its lessons

seriously and is generally concerned about his situation. *Id.* at 47-48. Based on his familiarity with the individual, he believes that the individual has abstained from alcohol for nearly a year, as he has stated, and does not feel that the individual's consumption of O'Doul's during that period is a cause for concern in his particular case. *Id.* at 50. He further stated that it may be possible for the individual to drink socially in the future: "He doesn't fit into the type of client I work with that I would say needs to abstain from alcohol on a daily basis for life." *Id.* at 52. When asked his opinion of what would constitute adequate evidence of rehabilitation in the individual's case, the clinical counselor responded, "I would be professionally comfortable . . . if he were to complete this program for ten weeks and remain in AA for another three months, at least with some regular attendance in terms of aftercare, and demonstrate that he could abstain from alcohol for a period of 12 months." *Id.* at 71-72.

### **The Clinical Social Worker**

The clinical social worker administered an initial assessment of the individual in December 2003. The individual's test results indicated that he had a slight problem with alcohol, probably due to his DWI arrest, according to her interpretation. *Id.* at 78-80. She saw the individual three times before he began his intensive outpatient treatment program in July 2004. Based on her initial assessment, she saw no need for immediate treatment, and the three sessions she had with the individual were not treatment. *Id.* at 83, 85. The clinical social worker also teaches one component of the treatment program the individual attends, and stated that he is a stable and sincere participant in her class. *Id.* at 82. She expressed her opinion that a diagnosis of alcohol abuse is no longer relevant after a person has been abstinent for a year and has had no alcohol-related legal, work or social problems during that period. *Id.* at 90.

### **The Supervisor and the Client**

These witnesses attested to the individual's behavior on the job. They testified that the individual is a very good, motivated employee and produces a very high caliber of work. *Id.* at 94, 103. Neither has observed any evidence of alcohol use or abuse on the worksite. *Id.* at 95, 103-106. They both stated that the individual has talked to them seriously about his problem with alcohol. The supervisor believes that the individual's motivation for seeking treatment stems not only from the suspension of his access authorization but also from a desire to address his personal issues. *Id.* at 96-99. The individual's client also provided examples to illustrate that the individual takes security concerns seriously. *Id.* at 105.

### **The DOE Psychiatrist**

The DOE psychiatrist testified after he had heard the testimony of the other witnesses. In his testimony, he offered the following observations. He clarified for the record that there is no bright line between having an alcohol-related illness and not having one, just as there is no bright line between alcohol abuse and alcohol dependence. *Id.* at 117. He also explained that he had not relied on the individual's two well-spaced DWIs in

determining that he suffered from alcohol abuse, but rather on other criteria supported by his admission that he had driven a number of times when he thought he was intoxicated and his admission that his wife had argued with him about going to bars, playing pool and drinking with his friends, rather than being at home. *Id.* at 111. The DOE psychiatrist also stated that he took into consideration that the individual was a young man and had already had two DWI arrests. These DWIs were matters of concern for the DOE psychiatrist, as were the individual's resumption of drinking after making statements to the local security office (in October 2002) and to him (in January 2003) that he intended to stop drinking. Despite his knowledge that DOE was concerned about his alcohol use, he resumed drinking after making those statements. *Id.* at 114.

In the individual's favor, the DOE psychiatrist found that the individual had been straightforward with him about his alcohol use at the time of the evaluation; he felt the individual did not minimize the amount or effect of his alcohol consumption, nor did he try to obstruct the meaning of his responses. *Id.* at 109. The DOE psychiatrist also stated that in his opinion, the individual's use of O'Doul's prior to beginning his treatment program is not a problem. *Id.* at 120. He noted that as of the date of the hearing, the individual had not been intoxicated for more than two years, and that he had not had an alcoholic drink (excluding O'Doul's) in about a year. *Id.* at 121. He also considered the fact that the individual did not receive a copy of his report until shortly before the hearing, and that the individual took action immediately after he received it. *Id.* at 121-22.

Based on his 19-month-old evaluation and his observations at the hearing, the DOE psychiatrist concluded that the individual had shown adequate evidence of rehabilitation or reformation from his alcohol abuse. *Id.* at 124. He stated that he evaluated the individual with a mild degree of alcohol abuse; though the individual technically met two of the DSM IV-TR criteria for that condition, the DOE psychiatrist stated that the underlying facts did not present a severe or even moderate case of alcohol abuse. *Id.* at 122, 124-25. Nevertheless, he told the individual that resuming alcohol use in his case would, more likely than not, lead to future alcohol-related difficulties. *Id.* at 123.

### **Analysis**

A diagnosis of alcohol abuse raises concerns regarding a person's willingness or ability to protect classified information, and drinking to excess may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. A history or pattern of alcohol-related arrests creates doubt about a person's judgment, reliability and trustworthiness. The local security office had a substantial basis in the record for raising these concerns. Upon consideration of the evidence presented at the hearing, however, I find that the individual has mitigated all of the concerns in the Notification Letter.

I place the greatest weight on the DOE psychiatrist's expert opinion at the hearing that the individual has shown adequate evidence of rehabilitation or reformation, and that he no longer suffers from alcohol abuse. The DOE psychiatrist reached this opinion in spite

of the fact that the individual had not met the treatment and abstinence requirements set out in the evaluation report written 19 months before the hearing. The record shows that the individual had no knowledge of the psychiatrist's treatment recommendation until shortly before the hearing, and that is why he did not enroll in a suitable treatment program. I am also persuaded that the individual consciously changed his behavior after his access authorization was suspended. I find the individual produced credible testimony that he has not been intoxicated since July 2002, more than two years before the hearing, and that he is responding well to treatment and taking it seriously. Through maturation and self-discipline, as well as the benefit of treatment and Alcoholics Anonymous, the individual has transformed himself from an occasional alcohol abuser into someone who has abstained from alcohol completely for approximately one year, discounting the "non-alcoholic" beer he last consumed some three months before he began treatment and five months before the hearing. I agree with the DOE psychiatrist that the individual has achieved his goal of rehabilitation from alcohol abuse. Consequently, the individual has mitigated the local security office's concerns under Criterion J. Furthermore, because the individual now shows adequate evidence of rehabilitation or reformation from his alcohol abuse, he no longer suffers from an illness that causes or may cause a significant defect in judgment or reliability. Consequently, the individual has also mitigated the local security office's concerns under Criterion H.

### **Conclusion**

Based on the record in this proceeding, I find that the individual has resolved the security concerns under 10 C.F.R. § 710.8(h) and (j) that the local security office specified in its Notification Letter. For the reasons explained in this decision, I find the individual demonstrated that restoring his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual's access authorization should be restored.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: April 5, 2005